

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 17650 of 2006(A)

PETITIONER:

HARIDASAN V.,
CONDUCTOR, K.S.R.T.C., HARIPAD,
ALAPPUZHA DISTRICT.

BY ADV. SRI.R.RAJASEKHARAN PILLAI
SRI.M.S.NISHAD
SMT.SABINA JAYAN

RESPONDENTS:

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1. THE KERALA STATE ROAD TRANSPORT CORPORATION, REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR, THIRUVANANTHAPURAM.
 2. THE ASSISTANT TRANSPORT OFFICER, TRANSPORT OFFICE, K.S.R.T.C., HARIPAD.
 3. THE EXECUTIVE DIRECTOR VIGILANCE, K.S.R.T.C., THIRUVANANTHAPURAM.

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX IN W.P.(C). NO.17650 OF 2006 A

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE CERTIFICATE ISSUED BY THE MEDICAL BOARD.

EXT.P2 TRUE COPY OF THE CHARGE SHEET OF THE PETITIONER DATED 4.4.1997 ISSUED BY THE THIRD RESPONDENT.

EXT.P3 TRUE COPY OF THE EXPLANATION TO EXT. P2 SUBMITTED BY THE PETITIONER DATED 9.4.1997.

EXT.P4 TRUE COPY OF THE ORDER NO.VLA1-000481/97 DATED 21.6.1997 OF THE THIRD RESPONDENT.

EXT.P5 TRUE COPY OF THE APPEAL PETITION DATED 25.8.1997 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P6 TRUE COPY OF THE REPRESENTATION DATED 28.6.1997 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P7 TRUE COPY OF THE REQUEST DATED 25.6.1999 MADE BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P8 TRUE COPY OF THE INTIMATION DATED 19.10.2001 FROM THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P9 TRUE COPY OF THE REPRESENTATION DATED 31.12.2002 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P9A TRUE COPY OF THE REPRESENTATION DATED 30.6.2003 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P9B TRUE COPY OF REPRESENTATION DATED 7.8.2003 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P10 TRUE COPY OF THE LETTER DATED 6.11.2003 FROM THE 2ND RESPONDENT TO THE THIRD RESPONDENT.

EXT.P11 TRUE COPY OF THE REQUEST DATED 22.12.2003 MADE BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P12 TRUE COPY OF THE REPRESENTATION DATED 16.12.2004 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P13 TRUE COPY OF THE CHARGE SHEET DATED 8.2.2006 OF THE PETITIONER.

EXT.P14 TRUE COPY OF THE REPLY DATED 28.2.2006 TO EXT.P13 SUBMITTED BY THE PETITIONER.

EXT.P15 TRUE COPY OF THE LONG LEAVE REGISTER.

EXT.P16 TRUE COPY OF THE ORDER DATED 26.12.2006 ALONG WITH THE FORWARDING LETTER OF THE ATO.

W.P.(C). NO.17650/06 A

RESPONDENTS' EXHIBITS:

EXT.R1(A) TRUE COPY OF THE CIRCULAR MEMORANDUM DATED 5.7.2001.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 17650 OF 2006 A

Dated this the 7th November, 2007

JUDGMENT

Petitioner has approached this seeking the following reliefs:

"i. Issue a writ of certiorari or other appropriate writ, order or direction, quashing Exts.P4 and P13 as arbitrary, illegal and without application of mind.

ii. Issue a writ of mandamus or other appropriate order, directing the respondents to treat the period from 1.2.1997 to 3.4.1997 as periods spent on duty for all purposes including pay and allowance.

iii. Issue a writ of mandamus or other appropriate order, directing the respondents to consider Ext.P5 and pass appropriate orders forthwith.

iv. Issue a writ of mandamus or other

appropriate order directing third respondent to finalise Ext.P13 proceedings in the light of the explanation Ext.P14 after hearing the petitioner.

v. Issue a writ of mandamus or other appropriate order directing the respondent to fix the pay of petitioner in accordance with the revision scales and disburse the arrears payable to the petitioner.

vi. Issue a writ of mandamus or other appropriate order directing the 1st respondent to assign light duty to the petitioner in view of his ailment and on considering Exts.P6, P7 and Ext.P9 series.

vii. Issue a writ of mandamus or other appropriate order, directing the 1st respondent to pass appropriate orders commanding the respondents to consider the payment of compensation payable to him under the Workman Compensation Act considering Ext.P1 on account of the injury he sustained in the accident on 9.11.2003 while actually on duty.

viii. Declare that Exts.P4 and P13 are without basis and without application of mind."

2. Case of the petitioner, in brief, is as follows:

Petitioner was appointed on the advice of the Public Service Commission in 1981. His probation was declared as a Conductor. Petitioner met with an accident on 9.11.1993 rendering him disabled for line duty. Petitioner was undergoing treatment in various systems ever since the accident. He was praying for light duty. His request was not favourably considered. Ext.P1 is the Certificate issued by the Medical Board assessing the disability due to the accident at forty per cent. Ext.P2 is the charge sheet citing unauthorised absence. Petitioner gave explanation and produced medical certificate. Petitioner is not permitted to join. He submitted Ext.P3 explanation. Ext.P4 is the order of punishment. By Ext.P4, it is stated that taking a lenient view, petitioner is awarded a punishment of barring increments for three months temporarily

and the period of his absence shall be treated as leave without allowance. Petitioner preferred Ext.P5 Appeal. It is stated that no orders have been passed (Reply Affidavit would show that Ext.P16 order is passed in the Appeal rejecting the Appeal). According to petitioner, he has been regularly requesting for allotment of light duty. He made Ext.P6 representation, wherein he has stated that he is prepared to work even in lower grade. Ext.P8 is an intimation from the second respondent calling upon him to appear before the Medical Board. But, it was stated that the Medical Board will consider only the cases of those accidents and disabilities which occurred within a period of six months prior to the convening of Medical Board. Petitioner preferred Exts.P9 series of representations for assigning him light duty. He received Ext.P10 from the second respondent to the third respondent wherein it was stated that the petitioner has no eligible leave and he will not be admitted to duty. However, it is stated that vide letter dated 8.12.2003, the first respondent's

office granted permission to join duty and consequently he reported for duty on 22.12.2003. According to petitioner, the Controlling Inspector was insisting that the petitioner will not be disbursed his salary and he is treated as a reserve Conductor, and not as a regular permanent employee of the Corporation. Petitioner made Ext.P12 representation. He was issued with Ext.P13 charge sheet stating that he was abstaining from duty unauthorisedly from 9.5.2003 onwards. Petitioner again gave Ext.P14 explanation. Proceedings are now pending.

3. A Counter Affidavit is filed on behalf of the respondents, inter alia, stating as follows:

It is stated that the petitioner did not produce any material to substantiate his claim that he is disabled for line duty. The accident occurred in 1993. He did not apply within the stipulated time for light duty. The Medical Board did not recommend light duty as per the Rules. Exts.P6 and P7 are stated to be false. It is stated that admittedly, the petitioner was

very much irregular in service and he did not show any interest to attend duty regularly. Ext.P13 was issued on the Report dated 2.2.2006 that the petitioner is abstaining from duty unauthorisedly from 9.5.2003 onwards. It is stated that the Assistant Transport Officer, Kayamkulam is directed to conduct a detailed enquiry. It is stated that that even before the occurrence of the accident on 9.11.1993, petitioner was a habitual absentee from duty and he had been inflicted minor punishments for twenty times for unauthorised absence from duty. It is further stated that though the petitioner's name is on the rolls of the first respondent Corporation, he is not available for service. It is stated that the petitioner's service is not even sufficient to effect subscription towards PF, SWF, etc. and his pay in the successive revision scales and grade promotion cannot be fixed. He could be given salary only for the days he was performing duty. Ext.R1(a) is a copy of the Circular Memorandum in respect of light duty. It is stated that light duty cannot be given.

4. A Reply Affidavit has been filed by the petitioner. Therein, it is stated that the petitioner suffered 45% disability. It is stated that even now he is undergoing periodical treatment. It is stated that the petitioner is illegally kept out of duty from 31.1.2007. Ext.P15 is a long leave register produced to show that the petitioner has applied for long leave during 1993, 1994 and 1995 and for the treatment with effect from 16.9.1996. Ext.P16 is the order dismissing the Appeal filed by the petitioner against Ext.P4. It is stated that the petitioner has applied for category change. There was no response also. There is rebuttal of the other averments.

5. I heard the learned counsel for the petitioner and the learned standing counsel appearing on behalf of the respondent Corporation. Counsel for petitioner submits that whatever may have been the position earlier, petitioner may be paid salary and he is prepared to work anywhere. It is submitted that the petitioner is not pressing for light duty.

6. As far as the prayer to quash Ext.P4 is concerned, it is

evident that the petitioner carried the matter in Appeal and Ext.P16 is the appellate order. In fact, it is submitted by counsel for petitioner that there is no challenge to Ext.P16 in these proceedings, since Ext.P4 has culminated in Ext.P16. Regarding Ext.P13, I would only direct that the enquiry pursuant to Ext.P13 shall be completed as expeditiously as possible and, at any rate, within a period of three months from the date of production of a copy of this Judgment. Since the petitioner has expressed his intention to work even without being assigned light duty, as long as the petitioner works, he cannot be denied salary. Therefore, there will be a further direction that if the petitioner reports for duty before the second respondent, he will be assigned duties and if the petitioner works, he will be paid for the period during which he works. Learned standing counsel points out that it is open to the petitioner to apply for invalid pension and if the petitioner makes an application in this regard, the same will be considered and a decision taken in accordance

with law. I record this submission.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

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